IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

NOTICE OF MOTION NO.4514 OF 2007
IN
SUMMARY SUIT NO.1871 OF 2007

Ariel Maritime Pte Ltd. ..Plaintiff.
Vs.
M/s. K.R. Enterprises & Others ..Defendants.

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Mr. Pravin Samdani, Senior Advocate with Mr. Darshan Mehta i/b M/s. Dhruve Liladhar & Co. for the Plaintiff.

Dr. Virendra Tulzapurkar, Senior Advocate with Mr. Indranil Deshmukh i/b Amarchand & Mangaldas & Suresh A. Shroff & Co. for Defendant Nos.2 and 3.

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CORAM: **DR. D.Y. CHANDRACHUD, J.**

14th December, 2007.

P.C. :

1. This Motion has been taken out by the Defendants under Order 7 Rule 11 of the Code of Civil Procedure 1908 on the ground that the plaint does not make out any cause of action against the Defendants. The submission of the Defendants is that the averments in paragraph 2 of the Plaint would show that the Plaintiff is an agent of the KDS group which is based in Bangladesh. In paragraph 3 of the plaint it has been averred that the KDS group desired to purchase 12,500 MT of Refined White Cane Sugar and

that in March 2005 the Plaintiff on behalf of the KDS group entered into negotiations with the Defendants through a company by the name of Kazcom. Pursuant to this a contract was entered into between the Defendants and the KDS group which has been signed on behalf of the KDS group by a director. A reference has been made to the averment in paragraph 10 of the plaint in which it has been stated that the suit has been filed on the basis of a purchase contract and the addendums thereto. It has been urged that under Section 230 of the Contract Act, 1872 an agent cannot personally enforce contracts entered into by him on behalf of his principal nor is he personally bound by them. Section 230 provides where such a presumption can be made.

2. Having heard the learned counsel appearing for the parties, I am of the view that there is no merit in the Notice of Motion. At this stage, the Notice of Motion has to be decided on the basis of the averments in the plaint as they stand. The case of the Plaintiff is that a contract was entered into on 23rd March, 2005 between the KDS group and the Defendants for the sale, supply and delivery of certain goods. One of the terms of the purchase contract was to the following effect :

> "A sum of USD 30/= pmt to be transferred to seller's bank account upon receipt of a letter from their bankers addressed to Ariel Maritime Pte Ltd. stating that in case of non shipment, this amount will be refunded to Ariel Maritime Pte Ltd., Singapore within 72 hours." (emphasis supplied).

3. In paragraph 6 of the Plaint it has been averred that under the terms of the purchase contract and to enable the Defendants to perform their obligations, the Plaintiff was required to pay the Defendants a sum of US $ 375,000 calculated at the rate of US $ 30 per MT for 12,500 MT by transfer of the same to the account of the Defendants with the Punjab National Bank, subject to the bank agreeing to refund the same to the Plaintiff. The bank by its letter dated 30th March, 2005 is stated to have agreed to refund the amount to the Plaintiff upon which a remittance was made by the Plaintiff to the bank. An amount of US $ 375,000 was utilized. The Defendants failed and neglected to ship and deliver the goods. It is in these circumstances that the Plaintiff has laid a claim for the refund of an amount of US $ 375,000 on the basis of the purchase contract. Reading the plaint as a whole, it would be evident that the Plaintiff claims that in pursuance of the contract dated 23rd March, 2005 monies have

gone from the Plaintiff; that the Plaintiff is named as a beneficiary under the contract and would be entitled to a refund of consideration upon the failure of shipments. In these circumstances, it cannot be said that there is no cause of action. Section 230 imposes a bar on an agent personally enforcing a contract entered into by him on behalf of the principal. Such a situation evidently does not arise in the present case where the Plaintiff independently seeks a refund of US $ 375,000.

The Notice of Motion is accordingly dismissed.